IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 707 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

BABULAL SHAMJI CHAUHAN

Versus

INSPECTOR GENERAL OF PRISONS

Appearance:

1. Special Civil Application No. 707 of 1989

MR IS SUPEHIA for Petitioner No. 1

Mr.L.R.Pujari, Asst.GOVERNMENT PLEADER for Respondent No. 1-4

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 27/07/2001

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the petitioner has been praying for a direction to the respondents for promoting the petitioner to the post of Naik and to promote him to the

said post from 27.10.1988 the day on which the juniors to the petitioners were promoted, with a further prayer to quash and set aside the adverse remarks as conveyed to him by memo, dated 22.6.1988.

2. The say of the petitioner is that the petitioner joined the Jail Department of the State Government on 21.4.1966 as Sepoy, and since then he has been serving in the same capacity; that by order dated 27.10.1988 (Annexure "A") passed by the respondent No.1, 26 Sepoys have been promoted to the post of Naik in temporary capacity, out of these persons 18 persons are junior to the petitioner and these persons stand at Sl.No.9 to 26; that the supercession of the petitioner is illegal, unreasonable and in breach of provisions of Articles 14 and 16 of the Constitution of India; that the criteria for promotion from the post of Sepoy to the post of Naik is seniority-cum-merit as laid down in Govt.Resolution dated 18.12.1950, and therefore, so long as the petitioner is not found positively unfit for promotion, he can not be superceded; that the only ground on which the petitioner is superceded is the adverse remarks in the Annual Confidential Report of the petitioner for the year 1987-88 which were communicated to him by memo dated 22.6.1988(annexure "B"); that the petitioner made a representation dated 13.8.1988 for expunging the adverse remarks made in his Annual Confidential Report; that while considering the petitioner for promotion to the post of Naik, the said adverse remarks have been taken into consideration against the petitioner; that the competent authority could not have taken into consideration the adverse remarks for the purpose of denying promotion to the petitioner; that the adverse remarks, even if taken at their face value, are not such as would make the petitioner positively unfit for promotion. It is further contended by the petitioner that no ephemeral roll was maintained by the respondents as per the requirement of the resolution, dated 8.3.1969.

3. The respondents refuted the claim of the petitioner by filing affidavit-in-reply contending that the criteria for promotion to the post of Naik is not seniority but it is merit; that the petitioner was found positively unfit for promotion to the post of Naik, and therefore, he was superceded by 12 persons who were better than the petitioner; that the petitioner's service record was not good; that the petitioner was also communicated the the adverse remarks and it was also found that the petitioner was found to be negligent in performance of his duties and he was reprimanded orally on several occasions; that the petitioner has no legal or

fundamental right to be promoted to the post of Naik; that the only right is to be considered for promotion to the post of Naik and the petitioner was duly considered by the Committee along with other Sepoys and as he was positively found unfit, and he was not promoted to the post of Naik.

4. It has been submitted by Mr.L.R.Pujari, Ld.AGP that the petitioner has not exhausted the equally efficacious remedy available to him in as much as the petitioner could have raised grievance against non-grant of promotion before the Gujarat Civil Services Tribunal since the question of promotion could be entertained and considered by the said Tribunal. It is further submitted that the petitioner has challenged his dismissal order before the Gujarat Civil Services Tribunal and the same is pending. I would have considered this submission and directed the petitioner to go to Gujarat Civil Services Tribunal for redressal of his grievance on the score of non-grant of promotion to the post of Naik, but I am not inclined to do so for the simple reason that this petition is filed in the year 1989 and pending since then, i.e. for nearly 12 years. I do not deem it proper to direct the petitioner after 12 year's pendency of this petition, to Gujarat Civil Services Tribunal and considering the time lapsed during the pendency of this petition, I am inclined to consider this petition on merits.

5. It is not disputed that (annexure "B") adverse entries came to be recorded in the service record of the petitioner. The adverse remarks noted in the service record of the petitioner as per annexure "B" read as under:

"Industriousness and sincerity- supervision on work
entrusted required.
Desirability of discipline--Weak habit of not wearing
the uniform properly.
Argumentative.

As fr as the adverse entries as regards "industriousness and sincerity--supervision on work entrusted required" is concerned, it is submitted by the learned advocate for the petitioner that the ephemeral roll is required to be maintained as per the judgment rendered in the case of B.R.Kulkarni, Dr. vs Govt.of Gujarat and others reported in 19 GLR 1021 (DB). It can not be disputed that the Confidential Report has to be on the basis of entries made in the ephemeral roll which is required to be maintained by the reporting officer. That the said

ephemeral roll has to be written quarterly and supervisory officer's remarks have to be obtained and considered for the purpose of passing adverse remarks in the Confidential Report.

6. Ld.AGP, Mr.L.R.Pujari has placed for my perusal the Confidential Record of the petitioner. Form No.8 therein pertains to the petitioner for the period 1.4.87 to 30.11.1987. Bare perusal of the same suggests that during the said period the petitioner was found to be doing work negligently and that the performance was also weak and the petitioner is in the habit of not wearing clean uniform. Form No.8 relating to the period 1.12.1987 to 31.8.1988 also suggests that supervision was required on the work entrusted. The performance was found to be weak and he is in the habit of not wearing proper and clean uniform. It will be seen that the adverse entries noted in the Annual Confidential Report for the year 1987-88 are based on Form No.8 relating to the period aforestated, and the said adverse entries have been communicated to the petitioner vide annexure "B". Thus, it can not be said that the ephemeral roll as required is not maintained, and that the entries adverse to the petitioner have not been recorded therein so as to form the basis for writing adverse Annual Confidential Report for the year 1987-88. The adverse entries in the Annual Confidential Report of the petitioner would certainly disentitle the petitioner to the higher post by way of promotion since his performance even on the lower post was also weak, work entrusted required supervision, and he was in the habit of not wearing uniform properly. The only right the petitioner can claim is that he should be considered for promotion to the higher post of Naik. The petitioner has been considered for the promotion to the post of Naikand was found positively unfit in view of the adverse entries recorded in the Annual Confidential Report communicated vide annexure "B". For the aforesaid reasons the adverse enetries in the Confidential Report are not required to be set aside/expunged as prayed for by the petitioner in the petition and non-grant of promotion to the post of Naik on the basis of annexure "B" can not be regarded, in any manner, illegal, arbitrary or discriminatory when the petitioner was found positively unfit on the basis of record as pointed above.

7. Another contention raised by the petitioner is that he was not given uniform and so he could not put on the uniform. The Ld.AGP, Mr.L.R.Pujari has stated that the uniform is to be given every three years. It is also pointed out that in the year 1985 the petitioner was given uniform and the uniform is to be given once in

three years. This is not disputed by the learned counsel for the petitioner. There is no substance in the submission advanced by the learned counsel for the petitioner as regards not giving uniform to the petitioner and the said contention is noted for being rejected.

8. In the above view of the matter, the petitioner would not be entitled to any of the reliefs claimed in the petition and the petition being devoid of substance deserves to be rejected.

9. In the result, the petition is rejected. Rule is discharged. No order as to costs.

27.7.2001 (N.G.NANDI,J)